

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

VIRGINIA DOUGLAS #13892-052

:

Petitioner

:

v

:

Civil Action No.CCB-11-1146
(Related Crim Case CCB-98-315)

UNITED STATES OF AMERICA

:

Respondent

:

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MEMORANDUM

The above-captioned case was filed April 29, 2011, and was docketed as a motion to vacate pursuant to 28 U.S.C. §2255. ECF No. 101. Upon review of the motion, it is more appropriately construed as a motion for sentence reduction filed pursuant to 18 U.S.C. §3582. Thus, the civil case shall be closed and the motion for sentence reduction will be considered solely in connection with the criminal case.

Douglas asserts that she is entitled to a downward departure on her sentence because post-rehabilitation considerations were not considered by the court at time of sentencing. ECF No. 101. She contends that the Supreme Court's decision in *Pepper v. United States*, __ U.S. __, 131 S. Ct. 1229 (2011), authorizes the court to take petitioner's post-sentencing rehabilitation efforts into consideration.

Douglas's claim fails. Her sentence has not been set aside on appeal, nor has any change in the sentencing guidelines applicable to her sentence occurred to render her eligible for a sentence modification under § 3582. See 18 U.S.C. §3582(c)(2). The decision in *Pepper* concerns resentencing considerations after a sentence has been set aside on appeal. See *Pepper*, 131 S. Ct. at 1236, see also *Dillon v. United States* __ U.S. __, 130 S. Ct. 2683, 2690-92 (2011) (motion under §3582(c)(2) is not a form of resentencing). *Pepper* is factually distinct from this

case.

Petitioner has failed to state a viable ground for relief under 18 U.S.C. §3582 and the motion must be denied. A separate order follows.

May 24, 2011
Date

/s/
Catherine C. Blake
United States District Judge